IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 3094 (M/S) 2001

Mohan Singh S/o Sunder Singh ----Petitioner

Vs.

Union of India, through Ministry of Defence,
Govt. of India.
And others. ----Respondents.

Hon'ble P.C. Verma,J.

This writ petition has been filed by the petitioner seeking the writ of mandamus to command the respondents to pay disability pension to him as his eyes were injured and subsequently disability was accrued to him on account of low vision in his eye. It was contended in the writ petition that the petition was enrolled on 27.07.1965 in the Indian Army and in the year 1971 he was posted as a Signal Man in the Jalpai Guri (West Bengal), border of then East Pakistan and during the war with the Pakistan, acute pain arose in his left eye and subsequently the eye was operated in the Army Medical Core Hospital, Banglore and 40% disability was awarded to him. The operation could not be successful and there was very dim light in the eye of the petitioner.

After the retirement, the petitioner claimed disability pension and the same was rejected by the Sanctioning Authority vide annexure-2 to the writ petition, against which the petitioner filed an appeal to the Secetary Govt. of India, Ministry of Defence, New Delhi. The petitioner in his memo of appeal specifically stated that the disability accrued during the service period in the year 1971 and the Command Hospital, Banglore allowed 40% disability to him. The petitioner also submitted in his memo of appeal that he was enrolled in the Indian Army in July 1965 and disability arose in the year 1971 but the Appellate Authority also rejected his appeal without recording any reason. Regulation 173 and sub clause (3) & (4) of Regulation 173 of Pension Regulations for the Army deals with the disability pension which reads as under:-

"173. Unless otherwise specifically provided a disability pension may be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by Military service and is assessed at 20 percent or over."

"3. There must be a casual connection between disablement and military service for attributability or aggravation to be conceded."

"4. In deciding on the issue of entitlement all the evidence, both direct and circumstantial, will be taken into account and the benefit of reasonable doubt will be given to the claimant. This benefit will be given more liberally to the claimant in field of service cases."

The writ petition was admitted in the year 1989 and the respondents were directed to file counter affidavit. Again, this Court on 15.05.2002 directed the Union of India to file counter affidavit but no counter affidavit has been filed till date. The extract of service-book filed by the petitioner reveals that there is 40% disability awarded to the petitioner. It is also evident that the petitioner was enrolled in the Army in the year 1965 and disability arose in the year 1971, therefore, it is wrong to say by the Record Officer, while rejecting the disability claim of the petitioner, that it is attributed to Military Service and it have not been aggravated thereby.

For the reasons stated above, the petition is allowed. Writ of certiorari is issued and the impugned orders dated 16th July 1982 passed by Record Officer and order dated 31.01.1986 passed by the Defence Ministry rejecting appeal of the petitioner are quashed. Petitioner will be entitled to the payment of disability pension including arrears thereof with interest at the rate of 8% (eight percent) per annum.

Sd/- P.C. Verma,J.

October 14, 2003:
NCM:

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Delay Condonation Application Nil of 2004

&

Review Application No. 416 of 2004

IN

Writ Petition No. 3094 (M/S) of 2001

(Old No. 7556 / 89)

Mohan Singh S/o Sunder Singh

....**Petitioner**

Vs

Union of India through Ministry of Defence,
Govt. of India and others

... **Respondents**

Dated: May 25, 2006

Sri S.K. Posti, learned counsel for the petitioner.
Ms. Anjali Bhargava, ld. standing counsel for Union of India

Hon'ble P.C. Verma, J.

Heard learned counsel for the parties on the application and perused the record. I am satisfied with the reasons given in the application for condonation of delay in filing the review application. Hence, the delay in filing the review application is condoned. The reasons given in the accompanying affidavit of review application are also satisfactory for reviewing the order dated 14.10.2003 passed by this Court. Hence, the order dated 14.10.2003 passed by this Court is hereby recalled. The writ petition is restored to its original number. The fresh judgment and order is passed hereunder.

2. This writ petition has **been** filed by the petitioner seeking a writ of mandamus commanding the respondents to pay disability pension to him as his eyes were injured and subsequently disability was accrued to

him on account of low vision in his eye. It was contended in the writ petition that the petitioner was enrolled on 27.7.1965 in the Indian Army and in the year 1971 he was posted as a Signal Man in the Jalpai Guri (West Bengal), border of then East Pakisthan and during the war with the Pakistan, acute pain arose in his left eye and subsequently the eye was operated in the Army Medical Core Hospital, Bangalore and 40% disability was awarded to him. The operation could not be successful and there was very dim light in the eye of the petitioner.

3. After the retirement, the petitioner claimed disability pension and the same was rejected by the Sanctioning Authority vide annexure-2 to the writ petition, against which the petitioner filed an appeal to the Secretary, Govt. of India, Ministry of Defence, New Delhi. The petitioner in his memo of appeal specifically stated that the disability accrued during the service period in the year 1971 and the Command Hospital, Banglore allowed 40% disability to him. The petitioner also submitted in his memo of appeal that he was enrolled in the Indian Army in July, 1965 and disability arose in the year 1971 but the Appellate Authority also rejected his appeal without recording any reason. Regulation 173 and sub-clause (3) and (4) of Regulation 173 of Pension Regulations for the Army deals with the disability pension which reads as under:-

> *"173. Unless otherwise specifically provided a disability pension may be granted to an individual who is invalided from service on account of disability which is attributable to or aggravated by Military service and is assessed at 20 percent or over."*
> *"3. There must be a casual connection between disablement and military service for attributability or aggravation to be conceded."*
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> *"4. In deciding on the issue of entitlement all the evidence, both direct and circumstantial, will be*

taken into account and the benefit of reasonable doubt will be given to the claimant. This benefit will be given more liberally to the claimant in field of service cases."

8. A counter affidavit has been filed by the respondents wherein it has been stated that the petitioner was discharged from service on 31st July, 1981 under Army Rules 13(3)(iii)(i) read with Rule 13(2A) on fulfilling the conditions of his enrolment, after having put in 16 years and 10 days of service. The petitioner was posted in Eastern Sector from 4.2.1971 to 5.12.1971 at 64 Mountain Regiment Signal Section. The petitioner during the year 1971 remained in hospital from 18.5.1971 to 24.8.1971 and from 3.9.1971 to 14.10.1971 remained on sick leave and was again admitted to hospital from 18.10.1971 to 6.12.1971 and thereafter was dispatched to Depot Regiment (Corps of Signals) Jabalpur on 6.12.1971 and was posted to QPQ Communication Zone Signal Regiment (A peace unit) on 25.12.1971. It has been further stated that the petitioner was admitted in M.H. Binaguri/158/ General Hospital/ Command Hospital (Eastern Command) Calcutta from 18.5.1971 to 24.8.1971. Thereafter, the petitioner was transferred to 158 General Hospital on 25.5.1971 and further transferred to command hospital (Eastern Command) on 10.6.1971) and discharged from command hospital (eastern command) on 24.8.1971 for disability **"Retina Detachment Lt. Eye."** The petitioner was further admitted

in M.H. Trivendrum on 2nd April, 1981 and subsequently transferred to Command Hospital (Air Force), Banglore in connection with release Medical Board assessed 40% disability of the petitioner. It has further been stated that as per Pension Regulations, disability pension is admissible to an individual if the disability is assessed 20% and above and it is attributable to aggravated by military service. It has also been stated that the petitioner was operated on 23.12.1971 in the Command Hospital (Eastern Command) Calcutta. It has been further stated that the claim of disability pension of the petitioner was initiated to C.D.A. (P) Allahabad by Records Signals Jabalpur vide letter dated 10.9.1981 alongwith relevant release medical proceedings and the medical board proceedings dated 22.4.1981 at M.H. Trivendrum reveals that the petitioner was recommended to be released on Medical Category C.E.E. (P)(I) that diagnosis **"Retinal Detachment Left Eye (OPTD)".**

8. The claim of the petitioner for disability pension was rejected on the ground that the Medical Board in its proceedings dated 22.4.1981 opined that disability on account of which the petitioner was released was not attributable to service during peace or aggravated thereby and remained so and the said disability is not connected with the service by C.D.A. (P) Allahabad in consultation with Medical Advisors

(Pensions) attached to its office. The appeal against the said order was filed by the petitioner and the said appeal too was dismissed which was communicated to the petitioner vide letter dated 31.1.1986.

8. From the above-narrated facts in the counter affidavit, it is not disputed that the petitioner had eye disease before his posting i.e. 25.12.1971 in Communication Zone Signal Regiment (a peace unit). The petitioner had made several complaints about this disease prior to its hospitalization. This fact has been stated in paragraphs 4 and 5 of the writ petition and has not been denied by the respondents. It is also not disputed that the petitioner was enrolled in the year 1965 and work of the signal is directly catching of signals and giving of signal and this work was being conducted by the petitioner by his eyes. Thus, the recommendation of the Medical Board dated 22.04.1981 that the disability of the petitioner was not attributable to service during peace or aggravity thereby and remained so is relating to his posting prior to the period when he was posted at Jabalpur which is said to be a peace unit, while infact the disability had arisen on account of strenuous work on duty of a signal man at the time when he was posted in Eastern Border and he also made complaints to his superior authorities about his eye disease.

8. Therefore, the decision of rejection of pension of the petitioner by the Sanctioning Authority and the decision of rejection of appeal of the petitioner by the Appellate Authority is perverse as these authorities have not taken into account this fact that the petitioner had been admitted and was put to his treatment prior to his posting at Jabalpur which was said to be a peace unit.

8. Thus, for the reasons recorded above, the impugned orders dated 16.07.1982 passed by Record Officer and order dated 31.01.1986 passed by the Defence Ministry rejecting appeal of the petitioner are hereby quashed. The writ petition is allowed. The respondents are directed to calculate and pay the disability pension including arrears thereof with interest at the rate of 8% (eight percent) per annum to the petitioner as per rules.

(P.C. Verma, J.)

Rajeev Dang